

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEON MARTIN, JR.,

Plaintiff,

-against-

DR. KEVIN MCGRAW, ROSEANN GALAGAN,
R.N., JASON BERGER, L.P.N., CORRECTIONAL
MEDICAL CARE, CARL E. DUBOIS, ORANGE
COUNTY SHERIFF, and ORANGE COUNTY
CORRECTIONAL FACILITY, individually and in
their official capacities,

Defendants.

USDC SDNY
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DATE FILED: July 30, 2014

12 Civ. 8162 (PAC)(DF)

**ORDER ADOPTING
REPORT &
RECOMMENDATION**

HONORABLE PAUL A. CROTTY, United States District Judge:

Pro se Plaintiff Leon Martin brought this action under 42 U.S.C. § 1983, alleging that Defendants denied him constitutionally adequate care with respect to a tooth extraction while he was a pre-trial detainee at the Orange County Correctional Facility. Defendants moved to dismiss Plaintiff's Second Amended Complaint under Rule 12(b)(6) for failure to state a claim.

Although Plaintiff requested and received two extensions to respond to the motions to dismiss, he never responded to the motion.¹ On May 9, 2014, Magistrate Judge Debra Freeman entered an order for Plaintiff to show cause why the case should not be dismissed for his failure to prosecute. Plaintiff also failed to respond to that order and failed to notify the Court of his new address after his apparent release from custody.

Therefore, on June 18, 2014, Magistrate Judge Freeman issued a Report and Recommendation ("R&R") that the Court dismiss the action *sua sponte* for failure to prosecute, pursuant to Fed. R. Civ. P. 41(b). The R&R further recommends that, in light of Plaintiff's *pro*

¹ The extended deadline for Plaintiff's response was March 3, 2014.

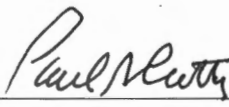
se status, the dismissal be without prejudice.

“Within 14 days after being served with a copy of [an R&R], a party may serve and file specific written objections to the proposed findings and recommendations.” Fed. R. Civ. P. 72(b)(2); *accord* 28 U.S.C. § 636(b)(1). A district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). “The district court may adopt those portions of the report to which no timely objection has been made, so long as there is no clear error on the face of the record.” *Feehan v. Feehan*, No. 09-CV-7016, 2011 WL 497776 at *1 (S.D.N.Y. Feb. 10, 2011). Plaintiff has not objected to the R&R, which was issued more than one month ago.

The Court has reviewed the record and finds no clear error. Therefore, the Court adopts Magistrate Judge Freeman’s R&R in its entirety, and this action is DISMISSED without prejudice. The Clerk of Court is directed to terminate the pending motions and to close this case. Pursuant to 28 U.S.C. § 1915(a)(3), the Court finds that any appeal from this order would not be taken in good faith.

Dated: New York, New York
July 29, 2014

SO ORDERED



PAUL A. CROTTY
United States District Judge

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